

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 UNITED STATES OF AMERICA,
7 Plaintiff,
8 v.
9 PASTOR PALAFOX, et al.,
10 Defendants.
11

Case No. 2:16-cr-00265-GMN-CWH

ORDER

12 Presently before the court is defendant Pastor Palafox's first brief regarding the scope of
13 the government's *Brady/Giglio* disclosures (ECF No. 1623), filed on June 12, 2019.

14 This case arises from allegations that defendant Pastor Palafox and his twenty-two other
15 codefendants conspired to participate in a racketeering enterprise in violation of the Racketeering
16 Influenced and Corrupt Organizations Act. (Superseding Indictment (ECF No. 13).) On January
17 18, 2019, the court amended the scheduling order and designated June 29, 2019 as the deadline
18 for the government to provide the defendants in trial group 1 with its *Brady* and *Giglio*
19 disclosures. (Second Amended Scheduling Order (ECF No. 1453).) Palafox now moves for an
20 order requiring the government to disclose information regarding alleged contacts between
21 government informants and un-indicted individuals. Palafox files this brief "before he is
22 prejudiced by the government's delay or failure to disclose the details about each . . . [contact]." (Brief (ECF No. 1623) at 2.)

24 It is the duty of the judiciary to "say what the law is." *See Marbury v. Madison*, 5 U.S.
25 137, 177 (1803). Under Article III of the Constitution, the court's exercise of judicial power is
26 limited to "live cases or controversies." *See* U.S. Const. art. III, § 2; *see also Clark v. City of*
27 *Seattle*, 899 F.3d 802, 808 (9th Cir. 2018). The implicit policies of Article III prohibit the court's
28 use of advisory opinions. *Flast v. Cohen*, 392 U.S. 83, 96 (1968). This rule is "the oldest and

1 most consistent thread in the federal law of justiciability[.]” predating the Supreme Court’s
2 holding in *Marbury v. Madison*. See *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 821
3 (9th Cir. 2017) (quoting *Flast*, 392 U.S. at 96). “A justiciable controversy is definite, concrete,
4 real, and substantial; it is subject to specific relief.” *Campbell v. Wood*, 18 F. 3d 662, 680 (9th
5 Cir. 1994).

6 Having reviewed Palafox’s request, the court finds no live controversy. Palafox’s brief
7 does not allege that the government has not complied with its duty to disclose *Brady/Giglio*
8 information, nor does the brief allege that the government does not intend to comply. Rather,
9 Palafox requests a ruling on a potential dispute that may arise, if the government does not disclose
10 information regarding contacts between government informants and alleged un-indicted
11 individuals by June 29, 2019. The matter is not ripe for a judicial determination and the court
12 declines to issue a ruling at this time. As such, Palafox’s request is denied without prejudice.

13 IT IS THEREFORE ORDERED that defendant Palafox’s first brief regarding the scope of
14 the government’s *Brady/Giglio* disclosures (ECF No. 1623) is DENIED without prejudice.

15 DATED: June 25, 2019

16
17
18 
19 C.W. HOFFMAN, JR.
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28